

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,178

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare not allowing her an earned income disregard in determining the amount of the Department's recoupment from the petitioner's ongoing ANFC benefits of a prior overpayment of ANFC to the petitioner that was caused by the Department's error. The issue is whether the Department's decision is in accord with the pertinent regulations.

FINDINGS OF FACT

In lieu of an oral hearing the parties submitted the following Stipulation of Facts:

1. Prior to January, 1996, the claimant [petitioner] and her two children received a monthly ANFC payment of \$586.00. From this, \$32 was being deducted each month as recoupment of an overpayment, previously caused by Department error or oversight. [Petitioner] is assigned to Group 3 for "welfare reform" purposes.
2. On or about January 2, 1996, [petitioner] commenced employment at which she has since grossed approximately \$130.00 per week. The actual figure varies according to her number of hours of employment, which can change at the employer's discretion. [Petitioner] duly reported her employment to the Department.
3. On or about January 27, 1996, [petitioner] received a notice dated 1/26/96 from her caseworker [name], a copy of which is annexed as Exhibit 1 and incorporated herein. The notice says that effective February 15, 1996, her ANFC entitlement was being reduced from \$586.00 to \$278.00 because of her earnings, and that her recoupment was to increase from \$32.00 to \$195.00 per month. In the calculations on the second page of the notice, however, the recoupment amount is recorded as \$110.00, leaving a net ANFC benefit after recoupment of \$168.00.
4. On or about February 1, 1996, [petitioner] received an ANFC check in the amount of \$325.00, instead of the \$332.00 check she had been expecting based on January's checks. She also received a notice from

caseworker [name] stating that her Food Stamps were being increased ". . . because: your ANFC . . . went down from \$365.00 to \$268.00 . . . ." A copy of the Food Stamp notice, dated 1/30/96, is annexed as Exhibit 2 and incorporated herein.

5. On or about February 3, 1996, [petitioner] received another Food Stamp notice from [name], notifying her that her Food Stamps were being increased again" . . . because: your ANFC . . . went down from \$268.00 to \$83.00 . . . ." A copy of this notice, dated 2/2/96, is annexed as Exhibit 3 and incorporated herein.

6. On or about February 2, [petitioner] requested of her caseworker a Fair Hearing concerning the actions that were the subject of the 1/26/96 notice.

7. On or about February 16, 1996, [petitioner] received an ANFC check for \$33.00, instead of the \$222.00 that she had received in the middle of January.

8. On February 23, 1996, [petitioner's] attorney faxed a message to [caseworker's] supervisor, [name], in the DSW Burlington office, and to the Department's attorney Donelle Staley, clarifying that the Fair Hearing was being requested upon the issue of the amount of the recoupment only, not the reduction based on the new employment income. The same message requested restoration of the portion of [petitioner's] February benefits recouped in excess of the \$32 recoupment that was in effect prior to February, 1996. A copy of the message is annexed hereto as Exhibit 4 and incorporated herein.

### ORDER

The Department's decision is reversed.

### REASONS

Welfare Assistance Manual (W.A.M.) § 2234.2 includes the following provisions:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member. . . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and ANFC payments so long as the assistance unit retains from its combined income 90 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no other income, the amount of the recoupment will equal 10 percent of the grant amount.

If, however, the overpayment results from Department error or oversight, the assistance unit must retain from its combined income 95 percent of the amount payable to an assistance unit of the same composition with no income. For assistance with units no other income, the amount of the recoupment will equal 5 percent of the grant amount. . . .

The petitioner maintains that the above regulation should be interpreted as not barring the application of earned income disregards in cases, such as this, when the overpayment of ANFC is due to Department error. The petitioner points to the fact that the paragraph in the above regulation that applies to Department errors does not include the parenthetical words, "without application of disregards", which appear in the preceding paragraph that describes recoupment in situations other than Department errors.

The Department maintains that federal regulations require the disallowance of earned income disregards in all cases of ANFC recoupment. It must be concluded that the Department's position grievously misreads the federal regulations and patently conflicts with the express goals of its own Welfare Restructuring Project (WRP), in which the petitioner is an active participant.

The federal regulation in question, 45 C.F.R. § 233.20(a)(13)(A), <sup>(1)</sup> includes the following provisions:

The State must take all reasonable steps necessary to promptly correct any overpayment. . .

(2) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined aid, income and liquid resources, (without application of section 402(a)(8) <sup>(2)</sup> of the Act) not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recover at a rate less than the maximum, it must recover promptly.

The petitioner is clearly correct that the above regulation is merely a guideline that sets the maximum rate at which a state may recoup overpayments, and that nothing in this regulation specifically prohibits states from setting recoupment rates that are below the maximum. This interpretation of the federal regulation was upheld by the Vermont Supreme Court in Burbo v. DSW, 157 Vt. 664 (1991). The above federal regulation merely provides that in setting maximum recoupment amounts states need not apply earned income disregards. It does not prohibit states from allowing earned income disregards (and, hence, lower monthly recoupment amounts) if they choose to do so. The sole question in this case, therefore, is what the Vermont regulations allow the Department to consider in determining recoupment amounts.

The petitioner appears to concede--and the "plain language" of § 2232.2 certainly indicates--that in all overpayment cases, except those that are due to Department error, income disregards do not apply. The question in cases such as this, in which the overpayment of ANFC was solely due to Department error, is whether § 2232.2 should be interpreted as also precluding the application of earned income disregards. In resolving that question it is useful to examine the repercussions and effects of the Department's interpretation.

The Department concedes that the petitioner was not in any way at fault in causing the prior overpayment of ANFC to her that is now being recouped. The petitioner concedes that federal law and state regulations require that this money must be repaid through recoupment from her ongoing ANFC benefits. The question is whether as a result of this recoupment--even though she was not at fault in causing it--the petitioner must also lose the considerable benefits she previously enjoyed due to the fact that she is also engaged in gainful employment.

Under the Department's interpretation of § 2232.2 the petitioner loses all financial incentive to continue working solely because the Department made a previous error in calculating her ANFC. Even though

she was not at fault in being overpaid ANFC, the Department has determined that the petitioner's ANFC benefits will be reduced by an amount that leaves the petitioner with net income each month that is exactly the same as if she were not working and collecting only the amount of ANFC that is payable to an individual who has no other source of income.

This result flies in the face of the stated goals of the Department's WRP regulations. W.A.M. § 2208.1 includes the following provision:

Through WRP, the Department seeks to enable more ANFC families to achieve self-sufficiency by strengthening families and increasing parental responsibility, by rewarding work and promoting self-support, and by putting a limit on how long families can receive welfare before a parental work obligation begins.<sup>(3)</sup>

The Department does not proffer any policy basis to justify why a person like the petitioner who is overpaid ANFC solely due to the Department's fault should cease to be "rewarded" for continuing to work. Absent any requirement in the federal regulations dictating such a result (as noted above), and considering that the plain language of the state overpayment regulation appears to provide otherwise, the Board cannot--and the Department should not--countenance such an incongruous, and patently unfair, "interpretation" of § 2232.2.

For all the above reasons, the Department's decision is reversed.

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1. See also, 42 U.S.C. § 602(a)(22).
2. The reference to "section 402(a)(8) of the Act" pertains to the provision in the federal AFDC statute that defines income exclusions. See 42 U.S.C. § 602(a)(8).
3. The WRP regulations provide, inter alia, that certain ANFC recipients who are working shall have the first \$150 and 1/4 of any remaining income each month disregarded in the calculation of their monthly ANFC benefits. See WAM § 2254. This is the disregard that the petitioner would lose if the Department's decision is upheld.